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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

KIN/169373

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**PRELIMINARY RECITALS**

Pursuant to a petition filed October 02, 2015, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Fond Du Lac County Department of Social Services in regard to Kinship Care, a hearing was held on December 22, 2015, at Fond Du Lac, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's application for Kinship Care benefits for her grandson.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED], Kinship Care Worker  
Fond Du Lac County Department of Social Services  
50 N Portland St  
Fond Du Lac, WI 54935

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Fond Du Lac County.
2. Petitioner applied for Kinship Care for a related child. There is CHIPS order in place.

3. Petitioner's Kinship care application was denied. The reason for the denial was that Petitioner does not have a driver's license but there are vehicles at Petitioner's home and she gets the child to appointments. Thus agency concluded it was not, therefore in the child's best interest to live with Petitioner as it was not safe to do so. There is no evidence to show Petitioner was driving illegally. All other eligibility criteria were satisfied.
4. Petitioner's adult niece did live in Petitioner's home but now lives on her own. Nonetheless, she goes to Petitioner's home and takes Petitioner and the child wherever they need to go. The niece does have a driver's license.

### **DISCUSSION**

The Kinship Care benefit is a public assistance payment of \$232 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in *Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6)*. Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

The Statutes require that a county department shall make payments in the amount of \$232 (as of 1/1/2015) per month to a Kinship Care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and, if the child is placed in the home of the kinship care relative under a court order, for a license to operate a foster home.

- 1m. The county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

...

*§48.57(3m)(a)2(am), Wis. Stats.*

The *Wisconsin Administrative Code*, at *§DCF 58.10(1)*, describes the “need” for placement as follows:

- (a) The child needs the kinship living arrangement. The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:
  1. The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
  2. The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
  3. The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
  4. The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

It must also be noted that, in Decision No. KIN-40/51985, dated May 22, 2002, the Department's deputy secretary concluded that even when the assessor finds that one of the four grounds cited above are met, there still must be evidence that there is a risk to the child cited in Wis. Stat. §48.13 if the child were to live with a parent. Essentially that decision ties together the first two conditions cited in *Wis. Stat. §48.57(3m)(am)*, that there be a need for the placement ***and*** that the child be at risk of harm that could lead to a Child In Need of Protection or Services (CHIPS) case. It also confirms that at least one of the criteria in the list at *Wis. Stat. §48.13* must be satisfied.

In a nutshell, the placement must be in the best interests of the child and there must be need for the placement as demonstrated by evidence of the child being a CHIPS or JIPS child or the likelihood that the child would be such if living with a parent.

The county agency denied this application as noted in Finding # 3. I am reversing that denial.

There is no evidence in the record here to demonstrate how the child involved has been put at risk because Petitioner does not drive. Relatives, friends, neighbors, walking, taxis and other public transportation are all means of getting around just fine in an urban area. In case of an emergency one would hope that 911 would be called. There is no evidence that the child does not get to school or has missed any medical appointments. Further, credible first hand testimony from Petitioner's niece is that she drives Petitioner and the child wherever and whenever necessary.

### **CONCLUSIONS OF LAW**

That the available evidence is not sufficient to demonstrate that the agency correctly denied Petitioner's application for Kinship Care.

**THEREFORE, it is**

### **ORDERED**

That the matter is remanded to the agency with instructions to rescind and reverse the denial of the Petitioner's application for Kinship Care and establish her as eligible for Kinship Care retroactive to the Petitioner's application date. This action shall be completed within 10 days of the date of this decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

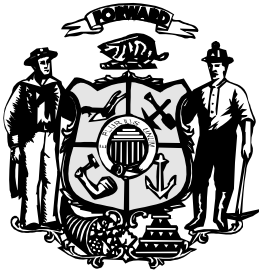
Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 19th day of February, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 19, 2016.

Fond Du Lac County Department of Social Services

DCF - Kinship Care

DCF - Kinship Care